

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

JOEY KIMBROUGH,  
  
Plaintiff,  
  
v.

Case No. 1:22-cv-01993-TWP-MJD

**NOTICE OF STATUS OF  
ARBITRATION PROCEEDINGS**

AMERICAN EXPRESS COMPANY AKA  
AMERICAN EXPRESS NATIONAL BANK

and

TRANS UNION LLC

Defendants. /

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Pursuant to the Court's Order on Motion to Compel Arbitration [ECF No. 49] and the Court's Order Staying Proceedings Pending Arbitration and Dismissing Pending Motion Without Prejudice [ECF No. 50] (together, the "Orders"), Defendant American Express National Bank ("American Express") states the following:

1. Pursuant to the Court's Orders [ECF Nos. 49 & 50], American Express must file a "Notice setting forth the status of the arbitration proceedings on or before Friday, January 5, 2024, and every thirty (30) days thereafter."
2. On December 22, 2023, the United States Court of Appeals for the Seventh Circuit dismissed Plaintiff's appeal, No. 23-2911. *See* Order, attached hereto as Exhibit 1.
3. On December 22, 2023, the United States Court of Appeals for the Seventh Circuit dismissed Plaintiff's appeal, No. 23-2912. *See* Order, attached hereto as Exhibit 2.
4. To date, American Express has not received notice that Plaintiff has commenced arbitration proceedings.
5. American Express will file another Notice setting forth the status of the arbitration

proceedings in thirty (30) days pursuant to the Court's Orders [ECF Nos. 49 & 50].

Dated: January 5, 2024.

Respectfully submitted,

By: /s/ Adam R. Hoock

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Attorneys for Defendant *American Express  
National Bank*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 5, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and certify that a true and correct copy of the foregoing was provided to all parties and counsel of record, including: [joeykokomo2002@yahoo.com](mailto:joeykokomo2002@yahoo.com).

/s/ Adam R. Hoock

Attorney

# Exhibit 1

# United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

December 22, 2023

*Before:*

Thomas L. Kirsch II, *Circuit Judge*

John Z. Lee, *Circuit Judge*

Doris L. Pryor, *Circuit Judge*

No. 23-2911

JOEY D. KIMBROUGH,  
*Plaintiff - Appellant,*

v.

Appeal from the United  
States District Court for  
the Southern District of Indiana,  
Indianapolis Division.

AMERICAN EXPRESS COMPANY, also  
known as AMERICAN EXPRESS  
NATIONAL BANK,  
*Defendant - Appellee.*

No. 1:22-cv-01993-TWP-MJD

Mark J. Dinsmore,  
*Magistrate Judge.*

## ORDER

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

Generally, an appeal may not be taken in a civil case until a final judgment disposing of all claims against all parties is entered on the district court's civil docket pursuant to Fed. R. Civ. P. 58. *See Alonzi v. Budget Construction Co.*, 55 F.3d 331, 333 (7th Cir. 1995); *Cleaver v. Elias*, 852 F.2d 266 (7th Cir. 1988).

In this appeal, Joey D. Kimbrough seeks to challenge an order that denied plaintiff-appellant Kimbrough's motion for sanctions (Dkt. 28) and motion for a continuance (Dkt. 47). As noted in the court order issued in Appeal No. 23-2912, this case is not an end; it has been stayed pending the completion of arbitration. An appeal is prohibited in such a case. *See Moglia v. Pacific Employers Inc. Co. of North America*, 547 F.3d 835, 837 (7th Cir. 2008).

Moreover, this court cannot review the ruling of a magistrate judge absent consent of all the parties. *Jaquez v. United States*, 36 F.4th 725 (7th Cir. 2022). Such consent is absent from this case.

# Exhibit 2

# United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

December 22, 2023

*Before:*

Thomas L. Kirsch II, *Circuit Judge*

John Z. Lee, *Circuit Judge*

Doris L. Pryor, *Circuit Judge*

No. 23-2912

JOEY D. KIMBROUGH,  
*Plaintiff - Appellant,*

*v.*

Appeal from the United  
States District Court for  
the Southern District of Indiana,  
Indianapolis Division.

AMERICAN EXPRESS COMPANY,  
also known as AMERICAN EXPRESS  
NATIONAL BANK,  
*Defendant - Appellee.*

No. 1:22-cv-01993-TWP-MJD

Mark J. Dinsmore,  
*Magistrate Judge.*

## ORDER

On consideration of the papers filed in this appeal and review of the short record,

**IT IS ORDERED** that this appeal is **DISMISSED** for lack of jurisdiction.

“A pro-arbitration decision, coupled with a stay (rather than a dismissal) of the suit, is not appealable.... Indeed, 9 U.S.C. § 16(b) positively *forbids* appeal.” *Moglia v. Pacific Employers Ins. Co. of North America*, 547 F.3d 835, 837 (7th Cir. 2008) (emphasis in original). The only exception to § 16(b)’s prohibition is an appeal by permission under 28 USC § 1292(b). *Id.* at 838; see also *INTL FCStone Financial Inc. v. Jacobson*, 950 F.3d 491, 500-01 (7<sup>th</sup> Cir. 2020).

In this case, Joey D. Kimbrough appeals an order by Magistrate Judge Mark S. Dinsmore (Dkt. 49) that was entered on the docket on September 11, 2023, as modified by the order of Judge Tanya Walton Pratt (Dkt. 50) on September 12, 2023. In these orders, the district court granted a motion to compel arbitration and stayed all proceedings pending the completion of arbitration. As such, appellate review is prohibited.